IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY EIGHTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 9065 of 1996

Between:

B.V.Satyanarayana Raju, S/o. Chalamaiah.
D.No.36-30-1, Innispeta, Rajahmundry,
East Godavari District.

..... PETITIONER

AND

Licensing Officer (Deputy Transport Commissioner),
Kakinada, East Godavari.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to call for the records from the file of the Respondent connected with R.No.3475/A1/95 and quash the Demand Notice R.No.3475/A1/95 dated 10/04/1996 by issuing Writ of Certiorari or any other appropriate Writ, order or direction and to grant such other order or orders as this Hon'ble Court may deems fit and proper.

Counsel for the Petitioner:MR.NOUSHAD ALI
Counsel for the Respondent .: GP FOR TRANSPORT

The Court made the following :

O R D E R (Per MHSA,J)

Having heard learned counsel for respective parties and keeping in view that the matter is covered by the Larger Bench judgment of this Court in L.ROYAL REDDY & OTHERS v. GOVERNMENT OF A.P., only a few relevant facts need to be stated. They are; that the petitioner's vehicle being the bus ATK 5859 is having permit to ply on TSR No.5-A Dowleswaram Anicut to New Central Tobacco Research Institute via Government Hospital. However, at the time of check it was plying on the by-pass road from Y-Junction. According to respondent – authorities the same was unauthorized route in deviation of the permit. A show cause notice was issued seeking to recover difference in tax at the rate of Rs.438/- per seat. The explanation offered by the petitioner was not found satisfactory and the difference in tax as proposed in the show cause notice was confirmed by the impugned proceedings dated 10.4.1996. It is this order that has been assailed in the instant writ petition.

2. The Larger Bench of this court in L.ROYAL REDDY'S case (1 supra) has considered a similar contention and held that where the conditions of permit are violated, the rate of tax cannot be changed. It was further held that for violation of conditions of permit, the respondent – authorities would be at liberty to take recourse to law

under the Motor Vehicles Act.

3. Respectfully following the judgment of the Larger Bench, the demand notice is liable to be set aside.

4. Accordingly writ petition is allowed, setting aside the impugned demand notice dated 28.2.1996, with liberty however to the respondent – Department to proceed against the petitioner for the alleged violation of conditions of permit, if so advised.

5. In the facts and circumstances of this case, there shall be no order as to costs.

M.H.S.ANSARI,J

T.CH.SURYA RAO,J

AVS

DATE:28.01.2005

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this 28th day of January, two thousand and five.

Registrar

To

1. Licensing Officer (Deputy Transport Commissioner),
   Kakinada, East Godavari.

2. Two C.Cs. to G.P. for Transport, A.P. High Court Buildings,
   Hyderabad (out).

3. Two C.D. copies.